IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO. 922 OF 2004
IN
SUIT NO.2528 OF 1990

Amar International (Regd.) ..Plaintiff

Vs.

Dnyanu Shankar Karande ..Defendant

And

Ashok Kumar ..Applicant

Mr.P.M.Shah for the plaintiffs

Mr.K.B.Patil i/b Mr.S.S.Redij for the applicant

Mr.Malvankar, representative of Court Receiver

CORAM: S.U.KAMDAR, J

DATE: 21ST FEBRUARY 2005

P.C.:

1. The present Chamber Summons is taken out by the applicant for adding as a party defendent in the suit. According to the applicant he is entitled to right, title and interest in respect of Flat no.9, Shri Krupa Building, Om Mayureshwar Co-operative Society Ltd., Eksar Road, Babai Naka, Borivli (West), Mumbai 400 092.

2. The applicant is claiming right on the basis of purchase of a said flat from the defendant and thus, claiming right in respect of the said property. On the other hand the plaintiff has mortgage of the said flat in his favour executed by the defendant and thus the plaintiff is also claiming right in respect of the said suit flat. By the present suit the plaintiff has sought to enforce mortgage in respect of the said flat and has sought to recover the debt due to him by adjustment of sale proceeds towards the the suit claim.

3. The learned counsel for the plaintiff has contended that the defendant is not a necessary or a proper party in present suit and therefore should not be impleaded in the present suit and Chamber Summons should be dismissed. According to him, if there is any right in favour of the applicant then he is entitled to file his own suit and cannot be impleaded in this suit. He has also contended that the claim put forward by the applicant in respect of the said flat is bogus and without any merits.

4. In so far as the contention that the applicant should file the separate suit, I am of the opinion that it is not necessary in view of the fact that the present suit is in respect of the very same flat in which both are claiming rights from the defendant. The applicant is claiming right in respect of the said property by way of purchase thereof and the plaintiff is claiming that there is a valid mortgage in his favour. Thus, it is necessary that the applicant be added as a party defendant to establish his right at the trial of the suit. In so far as the merits of the case is concerned, whether the sale in favour of the applicant is vaid or not, I cannot decide the same at this stage and it can only be decided at the hearing of the suit. Chamber Summons is therefore, made absolute in terms of prayer clause (a). Applicant is directed to pay to the plaintiff the cost quantified at Rs.2,500/-.